

ISSUE DATE: November 12, 1997

DOCKET NO. P-999/C-97-564

ORDER DISMISSING COMPLAINT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
Gregory Scott
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Complaint by
MCI Telecommunications Corporation and
AT&T Communications of the Midwest Inc.
for Emergency Relief to Certify Minnesota
Local Exchange Carriers

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PROCEDURAL HISTORY

On April 15, 1997, MCI Telecommunications Corporation (MCI) and AT&T Communications of the Midwest, Inc. (AT&T) requested that the Commission

- direct the Minnesota LECs to file with the Commission rate reduction proposals to remove deregulated payphone investment and associated expenses from intrastate operations;
- certify to the FCC and parties in this proceeding whether LECs are in compliance with the FCC payphone requirements and eligible to receive payphone compensations; and
- suspend or not approve any basic payphone service tariffs until intrastate rates have been adjusted to reflect the elimination of payphone investments and expenses.

On May 6, 1997, Commission issued a notice allowing parties 30 days to respond to MCI and AT&T's (the IXC's) filing. Parties were allowed 10 days to reply.

On May 29, 1997, GTE Minnesota (GTE) filed comments.

On May 30, 1997, Minnesota Independent Coalition (MIC) and Frontier Communications of Minnesota (Frontier) filed joint comments.

On June 2, 1997, U S WEST Communications, Inc. (USWC) filed a copy of a letter certifying its eligibility for compensation under the FCC payphone orders.

On June 4, 1997, United Telephone Company (Sprint) and the Minnesota Department Public Service

(the Department) filed comments.

On June 16, 1997, AT&T and MCI each filed replies to the comments filed by the other parties. On August 1, 1997, the Department and USWC each filed supplemental comments.

On August 5, 1997, the Commission issued a notice requesting comments on the supplemental comments filed by the Department and USWC, and on any other comments already filed in the docket.

On August 8, 1997, MIC and Frontier filed joint reply comments.

On August 19, 1997, GTE, USWC, and MCI filed reply comments.

On August 20, 1997, AT&T filed reply comments and USWC filed a proprietary exhibit that was omitted from its August 19 comments.

The Commission met on October 14, 1997 to consider this matter.

FINDINGS AND CONCLUSIONS

I. SUMMARY OF ACTION

At the heart of this matter is a dispute between two IXC's (MCI and AT&T) and the Minnesota LECs (USWC, GTE, Frontier, and various independent LECs) over dial-around compensation. The IXC's have refused to pay this compensation to the LECs on the grounds that the LECs have not complied with the FCC's payphone orders.

Having considered this matter, the Commission believes that the proceeding initiated by the IXC's against the Minnesota LECs is an inappropriate way to approach this matter.¹ In the circumstances, entertaining such a proceeding would disrupt the certification/dial-around payment process established by the FCC. The Commission's interference with that process would be contrary to the direction of Minn. Stat. § 216A.05, subd. 6 to cooperate with federal agencies to harmonize state and federal law.

¹ The Commission notes that the IXC's' filing is more in the nature of a petition for enforcement of FCC Orders than it is a complaint against any particular telephone company.

At the same time, the Commission is aware that this case presents questions of first impression and wishes to find its way carefully and thoughtfully, in communication with the FCC, to achieve greater clarity regarding the proper roles for each regulatory body in this area of proximate, if not shared, regulatory responsibility.

Accordingly, the Commission will dismiss the complaint filed by AT&T and MCI for now and, simultaneously, seek communication and clarification with the FCC in this area: payphone deregulation.

II. COMMISSION ANALYSIS

The nub of the IXC's charge against the Minnesota LECs is that they have failed to reduce intrastate rates to reflect the removal of any and all charges that recover the costs of payphones, in violation of FCC payphone orders. The Commission does not believe that this charge is properly before the Commission.

In its Report and Order (Paragraph 129), the FCC reclassified LEC payphones, by indicating that LEC payphones should be treated as nonregulated, detariffed customer premise equipment. The FCC payphone orders also established a flat per month interim dial-around compensation of \$45.85 to be paid by IXCs to payphone providers. (Note: The Federal Court of Appeal has remanded the issue of the appropriate level of this compensation back to the FCC.)

In order to obtain interim dial-around compensation, the FCC indicated that LECs must certify compliance with the requirements of the payphone orders to the interexchange carriers (IXCs), if the IXCs require it. The dial-around payment has no direct relationship to the reclassification of LEC payphones. However, the FCC elected to tie them together by conditioning receipt of the dial-around compensation to a LEC certifying its satisfaction of six obligations in the payphone reconsideration order. Paragraph 131 of this order states:

To receive compensation, a LEC must be able to certify the following:

- it has an effective cost accounting manual (CAM) filing;
- it has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge (SLC) revenue;
- it has effective interstate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies;
- it has deregulated and reclassified or transferred the value of payphone customer premises equipment (CPE) and related costs as required in the Report and Order;

- it has in effect intrastate tariffs for basic payphone services (for "dumb" and "smart" payphones); and
- it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines.

Under the FCC payphone orders, in order to obtain interim dial-around compensation, LECs must certify compliance with the requirements of the payphone orders to the IXC, if the IXC requires. Paragraph 22, of the FCC's April 15, 1997 payphone order (in Docket No. 96-128) states:

In response to AT&T's arguments that a LEC must show proof that its intrastate tariffs have removed payphone subsidies consistent with Section 276, we note the Commission concluded that "[t]o receive compensation a LEC must be able to certify" that it has satisfied each of the individual prerequisites to receiving the compensation mandated by the Payphone Reclassification Proceeding. The Commission did not require that the LECs file such a certification with it. Nothing in the Commission's orders, however, prohibits the IXCs obligated to pay compensation from requiring that their LEC payees provide such a certification for each prerequisite. Such an approach is consistent with the Commission's statement that "we leave the details associated with the administration of this compensation mechanism to the parties to determine for themselves through mutual agreement."

Under the FCC process, state commissions are not obligated to certify LEC compliance with FCC payphone orders. IXCs may require such certifications from the LECs before dial around compensation is awarded. If an IXC believes that any particular LEC is not in compliance, it can refuse payment of the compensation and file a complaint with the FCC.²

In this case, it is not disputed that the Minnesota LECs have certified compliance not only with the FCC, but also to the IXCs. In these circumstances, the IXCs' recourse, if they believe the LECs have certified falsely, is by complaint to the FCC.

Finally, in Reply Comments filed August 1 and reiterated in Supplemental Comments filed August 19, 1997, MCI and AT&T acknowledged that the Commission is in no way obligated to investigate compliance with an FCC order. The complainants simply argued that nothing precludes any public utility commission from reviewing such matters.

² See the FCC's April 4, 1997 clarification order in CC Docket No. 96-128; DA 97-678, footnote 93.

The Commission disagrees with the IXCs' assertion that nothing precludes the Commission from reviewing such matters. Contrary to the IXCs' assertion, the Commission finds that its concern to cooperate with federal agencies to harmonize state and federal law concerning the payment of dial-around compensation (e.g. to honor the process indicated by the FCC for resolution of certification issues) precludes granting the relief requested by the IXCs in this matter.

ORDER

1. The request of MCI and AT&T filed April 15, 1997 is dismissed.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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